PATTO PERUMAL

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PULAU PINANG
WAN ADNAN J
[CRIMINAL APPEAL NO. 54-9-88]
27 AUGUST 1988

CRIMINAL PROCEDURE: *Habeas Corpus - Internal Security Act ss. 8(1), 11(2)(b) - Playing up racial issues in the past - Whether prejudical to the security of Malaysia now - Proximity in time required to provide a rational nexus - Delay explained - Sufficiency and relevancy of the allegations of fact outside judicial review - Detention order and statement of ground/allegations of fact signed by different persons - Whether valid - Delegation of Power Ordinance 1956, ss. 6, 17.*

The applicant applied for a writ of *habeas corpus* against his detention on 25 December 1987 under s. 8(1) of the ISA on the alleged view of preventing him from acting in a manner prejudicial to the security of Malaysia. He was served with the detention order and the statement of grounds on which the order was made and allegations of facts as required under s. 11(2)(b) of the ISA. The grounds for detention stated that since June 1980 till his arrest the applicant had conducted activities which had inflamed the racial feelings of the people of different races in the country and hence could have caused a security threat to the country. The particulars of charges set out 5 separate occasions supporting the grounds for detention - the 5 occasions were on 29 June 1980, 5 February 1983, 17 March 1984, 19 January 1985 and 2 August 1985.

The detention order was signed by the Minister of Home Affairs and the statement of grounds and allegations of fact was signed by the Chief Secretary to the Minister of Home Affairs.

The applicant in his affidavit in support *inter-alia* denied that he had acted in any manner or is about to act or likely to act in any manner prejudicial to the security of the country. He contended that:

(i) the Minister of Home Affairs did not apply his mind subjectively in the proper manner in that he acted mechanically like a robot in signing the detention order;

(ii) the allegation of facts were taken out of the context and did not reflect the true purport and were unfounded, improper, unlawful, baseless, vague, illegal, frivolous and an abuse of executive power;

(iii) the statement of allegation of fact was not signed by the Minister of Home Affairs when it should have been; and

(iv) the allegations of fact were too remote in point of time to the making of the order - there must be proximity in time to provide a rational nexus between the incidents relied on and satisfaction arrived at.

In the affidavit in reply, the Minister of Home Affairs denied (i), (ii) and (iv) above and averred that the Minister was satisfied after consideration of the facts that detention of the applicant was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia.

In para. 6 of his affidavit in reply, the Minister of Home Affairs further affirmed that the Chief Secretary was his officer and that the Chief Secretary prepared and signed the allegation of facts under the Minister's direction.

In a supplementary affidavit filed by the Minister of Home Affairs he averred that the purpose of the applicant's detention was preventive in nature and as the situation in the country was at the time of the detention very tense and dangerous calling for immediate action against persons including those who from past known activities were known to have a propensity for playing up racial issues who were likely, if not checked, add to the mounting tension. The Minister also added that the 5 incidents showed a propensity in the applicant to play up racial issues and that he was satisfied that the applicant's detention was necessary and that due to the Government's more lenient policy (prior to the applicant's detention) the applicant was not detained earlier.

Held:

[1] The first question is to determine whether the applicant has been detained in the exercise of a valid legal power - the detaining authority must prove the legality of the detention.

[2] Upon proof of (a) above, it is then for the applicant to show that the power had been exercised *mala fide* or improperly or made for a "collateral" or "ulterior" motive in order to succeed.

[3] The Court will not enquire into the sufficiency, relevancy or otherwise of the allegation of facts which is to be decided solely by the Minister of Home Affairs whose subjective satisfaction is not subject to Judicial Review.

[4] Production of the detention order, the authenticity of which is not impugned is sufficient proof of the legality of the applicant's detention.

[5] The Court cannot apply an objective test in relation to contentions (i) and (ii) above as this is tantamount to questioning the subjective satisfaction of the Minister of Home Affairs which is not subject to judicial review.

[6] Nonetheless, the Minister from his affidavit has clearly not failed to apply his mind subjectively in the proper manner.

[7] Contention (iii) has no merit in light of ss. 6 and 17 of the Delegation of Powers Ordinance 1956 and the contents of para. 6 of the affidavit of the Minister of Home Affairs.

[8] There ought to be proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at by the Minister.

[9] If there is an unexplained and long delay the subjective satisfaction of the Minister must be held to be not genuine or colourable.

[10] The Minister's averments in his supplementary affidavit are satisfactory explanations for the delay and these explanations also dispelled any inference that the Minister's subjective satisfaction was not genuine or colourable.

[11] The applicant's application is dismissed as he has failed to show that the Minister's power had been exercised *mala fide* or improperly or made for a collateral or ulterior purpose.

[Application dismissed.]

Cases referred to:
Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 142
Re Tan Sri Raja Khalid b. Raja Harun, Inspector-General of Police v. Tan Sri Raja Khalid b. Raja Harun [1988] 1 CLJ (Rep) 135
S.K. Abdul Munnaf v. The State of West Bengal [1974] AIR SC 2066
Jagan Nath Biswas v. The State of West Bengal [1975] AIR SC 1516
S.K. Serajul v. State of West Bengal [1975] AIR SC 1517
Gora v. State of West Bengal [1975] AIR SC 473

Legislation referred to:
Internal Security Act 1960, ss. 8(1), 11(2)(b)
Delegation of Powers Ordinance 1956, ss. 6, 17

For the applicant - Ngan Siong Hing (Gooi & Shanmugam with him) Abbas & Ngan
For the first & second respondents - Abdul Aziz; Solicitor General (Ng Aik Guan with him)

JUDGMENT

Wan Adnan J:

This is an application made for an order that a writ of *habeas corpus* be issued for the release of the applicant.

The applicant was detained pursuant to an order made under s. 8(1) of the Internal Security Act 1960 (the Act). Section 8(1) of the Act reads as follows:

> 8(1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

The detention order is in the following form:

> Akta Keselamatan Dalam Negeri, 1960 Perintah Tahanan
> [Seksyen 8(1)]
>
> Kepada:
> Penguasa,
> Tempat Tahanan Perlindungan Taiping
>
> Ketua Polis Negara,
> Bukit Aman - Kuala Lumpur;
>
> Semua Pegawai Polis Diraja Malaysia Yang berkenaan; dan
>
> Semua orang lain yang berkenaan.
>
> Bahawasanya saya adalah berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut dibawah ini dengan tujuan hendak mencegah beliau daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan:
>
> (a) Keselamatan Malaysia
>
> Nama
> Per/8371 Patto A/L Perumal @ P. Patto
>
> Nombor Kad Pengenalan 7580598 (B)
>
> Maka, Oleh Yang Demikian pada menjalankan kuasa yang diberi kepada saya di bawah Seksyen 8 (1) Akta Keselamatan Dalam Negeri, 1960, maka saya, Menteri Hal Ehwal Dalam Negeri, Malaysia, mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan

selama dua tahun mulai dari 26 haribulan Disember 1987 di Tempat tahanan Perlindungan Taiping atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Diperbuat pada 24 haribulan Disember 1987.

Menteri Hal Ehwal Dalam Negeri Malaysia
[Bil. KHEDN R.205/1182/4-6550]

The detention order was served on the applicant at about 10.15 p.m. on 25 December 1987. At the same time the applicant was served with the statement of the grounds on which the order was made and the allegations of fact on which the order was based as required by s. 11(2)(b) of the Act which reads as follows:

11(2) For the purpose of enabling a person to make representations under sub-section (1) he shall, at the time of the service on him of the order:

(a) ...

(b) be furnished by the Minister with a statement in writing:

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) ...

The statement reads as follows:

Pernyataan Di Bawah Seksyen 11(2) (B)
Akta Keselamatan Dalam Negeri, 1960

Nama Orang Tahanan : Patto A/L Perumal @ P. Patto
No. Kad Pengenalan : 7580598 (B)

Alasan- Alasan Untuk Perintah Tahanan

Bahawa Kamu, Patto a/1 Perumal @ P. Patto, sejak bulan Jun 1980 hingga ditangkap pada 27 Oktober 1987, telah menjalankan kegiatan yang menyemarakkan semangat perkauman di kalangan rakyat berbagai kaum dinegara ini. Kegiatan kamu itu boleh memudharatkan keselamatan negara.

Butir-butir Pertuduhan

1. Pada 29 Jun 1980, sewaktu berucap di satu majlis di Bangunan Peniaga Ikan, Jalan Hup Huat, Pantai Remis, Perak, kamu telah menuduh Kerajaan ingin menutup sekolah-sekolah Cina dan India.

2. Pada 5 Februari 1983, sewaktu berucap di satu majlis di Dewan Tokong Cina Kopisan Baru, Gopeng, Perak, kamu telah mendakwa bahawa Bahasa Cina akan hapus jika Majilis Perbandaran tidak membenarkan tulisan Cina ditulis di papan tanda kedai. Di majlis yang sama juga kamu telah mengecam Kerajaan mengamalkan dasar Islam yang kamu dakwa sebagai cubaan menjadikan Malaysia sebuah negara Islam.

3. Pada 17 Mac 1984, sewaktu berucap di satu majlis di Dewan Tokong Cina, Bagan Sungai Tiang, Rungkup, Perak, kamu telah mendakwa Kerajaan tidak menjalankan pentadbiran mengikut Perlembagaan terutama kerana menjalakan polisi satu bangsa, satu bahasa dan ugama bertujuan menjadikan Malaysia satu negara Islam.

4. Pada 19 Januari 1985, sewaktu berucap di satu majlis bertempat di Dewan Peniaga-Peniaga Ikan Pantai Remis, Perak, kamu cuba melaga-lagakan orang-orang Cina dengan orang Melayu dengan menuduh Kerajaan menyusahkan rakyat Cina kerana tidak memberi permit mengimpot

limau mandarin dan tidak mengawal harga barang-barang keperluan semasa perayaan Tahun Baru Cina. Kamu mendakwa sebaliknya Kerjaan mengambil tindakan mengawal harga barang-barang keperluan semasa perayaan Hari Raya Puasa.

5. Pada 2 Ogos 1985, sewaktu berucap di satu majlis di Persimpangan Jalan Laksamana dan Jalan Foo Choo Choon, Ipoh, kamu telah mengguna kes Sim Kie Choon dan Datuk Mokhtar Hashim untuk melaga-lagakan orang-orang Melayu dengan orang-orang Cina.

Dengan arahan,

(Ibrahim bin Mamat)
b.p. Ketua Setiausaha
Kementerian Dalam Negeri Malaysia

The English translation is as follows:

Statement Under s. 11(2)(b)
Internal Security Act 1960

Name Of Detainee: Patto A/L Perumal @ P. Patto
Identity Card No.: 7380598

The Grounds For The Detention Order

That you, Patto a/l Perumal @ P. Patto, since June 1980 till your arrest on 27 October 1987, had conducted activities which had inflamed the racial feelings of the people of various races in this country. Your activities could have caused a threat to the security of the country.

Particulars of Charges

1. On 29 June 1980, while delivering a speech at Bangunan Peniaga Ikan, Jalan Hup Huat, Pantai Remis, Perak, you accused the Government of intending to close Chinese and Indian Schools.

2. On 5 February 1983, while delivering a speech at a function at Dewan Tokong Cina Kopisan Baru, Gopeng, Perak, you alleged that the Chinese Language would be eradicated if the Majlis Perbandaran disallowed the use of Chinese characters on the signboards displayed on the shop. In the same function you condemned the Government of practising Islamic Policy and you alleged that the Government was trying to create an Islamic State.

3. On 17 March 1984, while delivering a speech at a function at Dewan Tokong Cina, Bagan Sungai Tiang, Rungkup, Perak, you alleged that the Government did not administer the country according to the Constitution, especially in practising a policy of one race, one language and religion with the aim of making Malaysia an Islamic State.

4. On 19 January 1985, while delivering a speech at a function at Dewan Peniaga-Peniaga Ikan Pantai Remis, Perak, you tried to create animosity between the Chinese and the Malays by accusing the Government of trying to cause hardship to the Chinese by not granting permit, to import mandarin oranges and by not controlling the price of essential goods during the Chinese New Year Festival. You alleged otherwise that the Government had taken steps to control the price of essential goods during Hari Raya Puasa Festival.

5. On 2 August 1985, while delivering a speech at a function at the junction of Jalan Laksamana and Jalan Foo Choo Choon, Ipoh, you cited the Sim Kie Choon case and Datuk Mokhtar Hasim case in order to make the Malays go against the Chinese.

By order,
(Ibrahim bin Mamat)
for Chief Secretary Ministry of Home Affairs Malaysia

The grounds for the application are contained in the applicant's affidavits. The applicant denied that he had acted in any manner or about to act or likely to act in any manner prejudicial to the security of the country or any part thereof or to the maintenance of essential services therein or to the economic life thereof. He contended that all the allegations of fact were taken out of context and did not reflect the true purport. According to him the allegations of fact were unfounded, improper, unlawful, baseless, infantile, vague, unclear, illegal, ridiculous, frivolous, an abuse of executive power and too remote in point of time.

I will first determine the correct approach in law to be taken in considering the application.

Suffian FJ (as he then was) said in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ p. 142:

> Finally, in my opinion, it is not for a Court of law to pronounce on the sufficiency, relevancy or otherwise of the allegations of fact furnished to him. The discretion whether or not the appellant should be detained is placed in the hands of the Yang di-Pertuan Agong acting on Cabinet advice. Whether or not the facts on which the order of detention is to be based are sufficient or relevant is a matter to be decided solely by the executive. In making their decision, they have complete discretion and it is not for a Court of law to question the sufficiency or relevance of these allegations of fact.
>
> In my judgment, the onus of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its authenticity and good faith are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*.

Salleh Abas, LP (as he then was) in *Re Tan Sri Raja Khalid b. Raja Harun, Inspector-General of Police v. Tan Sri Raja Khalid b. Raja Harun* [1988] 1 CLJ (Rep) 135 said:

> Where a person who has been deprived of his liberty challenges the detention it is for the authority to show that the person has been detained in exercise of a valid legal power. Once that is shown it is for the detainee to show that the power has been exercised *mala fide* or improperly or made for a "collateral" or "ulterior" purpose. Section 73(7) states that a person detained pursuant to the powers conferred shall be deemed to be in lawful custody. Thus the burden is immediately shifted to the detainee.
>
> *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 142 laid down the law on s. 8 of the Act. Whether or not the facts on which the order of detention is to be based are sufficient or relevant is a matter to be decided solely by the executive.

In *Minister* of *Home Affairs Malaysia and Penguasa Tempat Tahanan Perlindungan Taiping v. Karpal Singh s/o Ram Singh* (Supreme Court Civil Appeal No. 20 of 1988) Abdul Hamid Omar Ag. LP said:

> With all due respect to the learned Judge he would seem to have failed to distinguish between grounds of detention stated in the detention order and the allegations of fact supplied to the detainee. In particular he failed to recognise that whilst the grounds of detention stated in the detention order are open to challenge or judicial review if alleged to be not within the scope of the enabling legislation, the allegations of fact upon which the subjective satisfaction of the Minister are based, are not.
>
> In other words reasonable cause is something which exists solely in the mind of the Minister of Home Affairs and that he alone can decide it and it is not subject to challenge or judicial review unless it can be shown that he does not hold the opinion that he professes to hold.

My approach is therefore firstly to determine whether the applicant has been detained in the exercise of a valid legal power. It is for the detaining authority to prove the legality of the detention. Once that is proved it is then for the applicant to show that the power had been

exercised *mala fide* or improperly or made for a "collateral" or "ulterior" purpose. The Court will not enquire into the sufficiency, relevancy or otherwise of the allegations of fact. Whether or not the facts on which the order of detention is to be based are sufficient or relevant is a matter to be decided solely by the Minister of Home Affairs. The subjective satisfaction of the Minister is not subject to judicial review.

The first respondent, the Minister of Home Affairs in para. 3 of his affidavit affirmed on 18 July 1988 states as follows:

> 3. From the reports and information relating to the conduct and activities of the applicant I received from the police, I was satisfied that his detention was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia. Accordingly on 24 December 1987 I made an order under s. 8(1) of the Internal Security Act 1960 directing that he be detained for a period of two years with effect from 25 December 1987. Attached is a copy of the said detention order marked as Exhibit "DMM1".

I hold that the production of a copy of the detention order, the authenticity of which is not impugned is sufficient proof of the legality of the detention of the applicant.

I must now consider whether the applicant has succeeded in showing that "the power had been exercised *mala fide* or improperly or made for a collateral or ulterior purpose."

The applicant by his affidavit and through his Counsel had raised the following major points:

1. The Minister of Home Affairs did not apply his mind subjectively in the proper manner. It was alleged that the Minister had acted mechanically like a robot in signing the detention order. He therefore could not possibly be satisfied.
2. The allegations of fact were taken out of context and do not reflect the true purport. The allegations were unfounded, improper, ridiculous, frivolous, fictitious, baseless, infantile, vague and unclear.
3. The statement of the allegations of fact was not signed by the Minister. It should be signed by the Minister himself.
4. The allegations of fact were too remote in point of time to the date of the making of the detention order. There must be proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at.

As regards point No. 1 and No. 2, Counsel for the applicant had urged me to apply an objective test, namely, to enquire whether any reasonable man would have made the detention order based on the allegations of fact as supplied to the applicant. In this regard all that I need to say is that any enquiry by the Court towards this end is tantamount to questioning the subjective satisfaction of the Minister of Home Affairs. As I have said earlier the subjective satisfaction of the Minister is not subject to judicial review. In any event the Minister in his affidavit had affirmed as follows:

> 4. The detention order was made on the grounds and was based on the allegations of fact, referred to in para. 8 of the applicant's affidavit, a copy of which is attached and marked as Exhibit "DMM2". I deny, as alleged in para. 10 of the applicant's affidavit, that the five allegations of fact were "taken out of context and do not reflect the true purport".
>
> 5. With regard to paras. 11 to 16, and also 17, of the applicant's affidavit, I deny that the allegations of fact are, or any of them is, in any way unfounded, improper, unlawful, ridiculous, frivolous, fictitious, imaginary, baseless or too remote, or were or was made in bad faith. I state that, after very careful consideration of the evidence and the facts presented to me, I was satisfied that the applicant's detention was necessary with a view to preventing him

from acting in a manner prejudicial to the security of Malaysia, and I was satisfied at the time of the making of the detention order that it was necessary for the like reason that the applicant be detained for a period of two years.

6. With regard to para. 17(k) of the applicant's affidavit, I state that my officer, Ibrahim bin Mamat, prepared and signed the allegations of fact (Exhibit "DMM2" hereto) under my direction. The detention order, when I made it, was made on the grounds, and was based on the allegations of fact, contained in that statement.

7. With regard to paras. 15 and 17 of the applicant's affidavit, I deny each and every one of the allegations of victimisation, discrimination, abuse of executive power, bad faith and similar allegations. I affirm that, based on the allegations of fact in Exhibit "DMM2", I was satisfied that the applicant had carried out activities which kindled the racial sentiments of the various races in this country and which therefore could be prejudicial to the security of this country. I was therefore satisfied that his detention was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia, and I therefore deny, as claimed in para. 3 of the applicant's affidavit, that he had not acted, or that he was not about or likely to act, in a manner prejudicial to the security of the country.

8. With regard to paras. 17(i) and (1) of the applicant's affidavit, I deny that in the making of the detention order against the applicant there was any failure on my part to apply my mind subjectively in the proper manner, and I state again that, based on the evidence of the facts presented to me, I was satisfied that the applicant's detention was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia, and I accordingly made the detention order. I did apply my mind to the facts of the applicant's case, and I state that the detention order against the applicant was made in good faith and after being satisfied that his detention was necessary with a view to prevent him from acting in any manner prejudicial to the security of Malaysia or any part thereof.

From the above averments it is clear that the Minister had not failed to apply his mind subjectively in the proper manner. It is mischievous to suggest that the Minister had acted like a robot.

With regard to point No. 3, there is no merit whatsoever in the complaint in view of the provisions of ss. 6 and 17 of the Delegation of Powers Ordinance 1956 which read as follows:

6. (1) Subject to the provisions of s. 11 of this Ordinance and of any provision of any written law expressly to the contrary all acts, orders or directions which could lawfully be done or given, in the exercise of any power or in the performance of any duty conferred or imposed by any written law, by a Minister or the Chief Minister of a State may, subject to any directions given by him be validly and effectually done or given on his behalf and in his name by any officer under his administrative control and expressly or impliedly authorised by him generally or specially thereto or in the case of a Minister be done or given on his behalf and in his name by an Assistant Minister.

(2) A certificate in writing purporting to be under the hand of a Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to do or give a certain act, order or direction shall be conclusive evidence of the facts stated in such certificate.

17. (1) Where by any written law power is given to a Minister or the Chief Minister of a State to make any regulation or order or give any direction, approval, permission or consent, or where any document is required to be under the hand of, or signed or countersigned by, such Minister or Chief Minister, it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval permission, consent or document to be signified under the hand of, or signed or countersigned by, any officer under the administrative control

or direction of such Minister or Chief Minister as the case may be and expressly or impliedly authorised by him by name or office in that behalf or in the case of a Minister under the hand of or signed or countersigned by an Assistant Minister.

(2) A certificate in writing purporting to be under the hand of the Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to signify, sign or countersign a certain regulation, order, direction, approval, permission, consent or document shall be conclusive evidence of the facts stated in such certificate.

(3) Where any such regulation, order, direction, approval, permission, consent or document has been signified, signed or countersigned by any officer not authorised in that behalf the Minister or Chief Minister concerned as the case may be may ratify such signification, signature or countersignature and thereupon the name shall have effect as if at the date on which such signification, signature or countersignature was effected or affixed by such officer he had been duly authorised thereto.

The Minister in para. 6 of his affidavit had affirmed that Ibrahim b. Mamat, was his officer and that he prepared and signed the allegations of fact under his (Minister's) direction.

As regards point No. 4 Counsel for the applicant had referred me to a number of authorities. Among them were *S.K. Abdul Munnaf v. the State of West Bengal* [1974] AIR SC 2066 where Khanna J said:

The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order or to the maintenance of supplies and services essential to the community. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary (see *Nagen Murmu v. State of West Bengal* [1973] 3 SCC 63; ([1973] AIR SC 844; [1973] Cri LJ 667). No doubt, it is both inexpedient and undesirable to lay down any inflexible test as to how far distant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities. If in a given case the time lag between the prejudicial activity of a detenu and the detention order made because of the activity is *ex facie* long, the detaining authority should explain the delay in the making of the detention order with a view to show that there was proximity between the prejudicial activity and the detention order. If the detaining authority fails to do so, in spite of an opportunity having been afforded to it, a serious infirmity would creep into the detention order.

Jagan Nath Biswas v. The State of West Bengal [1975] AIR SC 1516 in which Krishna Iyer J said when dealing with a case where there was time lag of six months between the date of the detention order and the date of the last incident on which it was based,

The incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction.

I do agree with the proposition that there ought to be proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at by the Minister and that unexplained and long delay will be fatal to the plea of subjective satisfaction.

In *S.K. Serajul v. State of West Bengal* [1975] AIR SC 1517, Bhagwati J said:

> Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.

In *Gora v. State of West Bengal* [1975] AIR SC Bhagwati J at p. 473 said:

> There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the 'offending acts' and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and it's utility, therefore, lies only in so far as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future.

In the present case the detention order was made by the Minister on 24 December 1987. The date of the last incident in the statement of the allegations of fact was 2 August 1985. There was therefore a time lag of more than 2 years. I hold that unless there is a satisfactory explanation for the delay the subjective satisfaction of the Minister must be held to be not genuine or colourable.

The Minister of Home Affairs in his supplementary affidavit affirmed as follows:

> 3. On 28 October 1987 I made a statement in the Dewan Rakyat to explain to the nation the reasons necessitating the recent spate of arrests carried out by the police under the Internal Security Act 1960. I annex as Exhibit "DMM1" a copy of my statement as recorded in the Penyata Rasmi Parlimen. A White Paper (Order Paper 14 of 1988 entitled Towards Preserving National Security) was later tabled in the Dewan Rakyat on 22 March 1988 to further explain to the nation the action of the Government. A copy of the White Paper is annexed as Exhibit "DMM2".
>
> 4. Because the situation in the country had become very tense and dangerous, as explained in my statement in the Dewan Rakyat, I recognised and was satisfied that preventive action was necessary with a view to maintaining the security of the nation, and that such action would necessarily involve the arrest and detention of certain persons.
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> 5. As I saw it at that time, the purpose of the arrests and detention being preventive in nature, and the situation prevailing at that time having reached a tense and dangerous state, it would not be practical and it would not have served the purpose to first observe the activities of each person and wait until he was seen to do or say something explosive before arresting and detaining him. The situation called for the identification and immediate arrest even of persons who, from their known past activities, were known to have a propensity for playing

up racial and religious issues and who, therefore, would likely, if not effectively checked, give vent in words and deeds to their propensity, openly or clandestinely, to add to the mounting tension prevailing then.

6. I crave leave to refer to paras. 3 and 4 of my earlier affidavit and further state that before I made the detention order against the applicant, I had considered very carefully the allegations of fact I had before me. Those allegations furnished five recorded instances of speeches made by the applicant which played up racial issues and would stir up racial sentiments. Although the allegations of fact were separated by considerable intervals and the latest was on 2 August 1985, I was satisfied that, having regard to the circumstances prevailing at the time when I made the order, they constituted material from which I could conclude that there was a reasonable probability that, but for the making of the detention order, the applicant would have acted in a manner prejudicial to the security of the nation, and I did so conclude. Indeed, to my mind at that time, those allegations showed a propensity in the applicant to play up racial issues and stir up racial sentiments, and given the then existing volatile situation, I was personally satisfied that if the applicant was not further detained, he would in all likelihood, in the tense and dangerous situation prevailing at the time, act in a manner prejudicial to the security of Malaysia. I was therefore satisfied that his detention was necessary with a view to preventing him from so acting and I am now still satisfied that his continued detention is necessary.

7. Previous to that, no action had been taken against the applicant, although he had been known to make the speeches referred to in the allegations of fact. But as I explained in the Dewan Rakyat, since 1981 the Government had adopted a liberal policy and had refrained from taking any action in respect of incidents previously considered provocative or prejudicial to the security of the nation. However, as it turned out, this liberal attitude of the Government was, time and again, exploited by various groups who played up racial and religious and other senstive issues, thereby bringing about various tense situations. The tension escalated to a dangerous level culminating in a highly volatile and dangerous situation in the country sometime in October 1987, necessitating a departure from the previously liberal stand in order to defuse the situation and protect the country from any calamity. That was the reason why no action was taken against the applicant before October 1987.

I find that the Minister's averments are satisfactory explanation for the delay and that such explanation has dispelled any inference that the Minister's subjective satisfaction was not genuine or colourable. The applicant therefore also fails on this point.

As the applicant has failed to show that the Minister's power had been exercised *mala fide* or improperly or made for a collateral or ulterior purpose he must fail in this application.

This application is therefore dismissed.

Also found at [1989] 1 CLJ 42